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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to 47 C.F.R. § 1.415, files its Reply Comments on the Commission's Notice of Proposed Rulemaking in the captioned docket, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 93-454 (rel. Oct. 8, 1993) ("NPRM"). The NPRM seeks comment on the amendment of Communications Act Sections 3(n) and 332 by the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

I. THE BUDGET ACT DOES NOT EXPAND THE COMMISSION'S JURISDICTION BEYOND THAT GRANTED BY SECTION 2(B) OF THE COMMUNICATIONS ACT WITH RESPECT TO PREEMPTION OF INTRASTATE INTERCONNECTION RATES CHARGED BY LOCAL EXCHANGE CARRIERS TO MOBILE SERVICE PROVIDERS

In the NPRM, the Commission proposed to apply its cellular interconnection policy to commercial mobile service providers and "preempt[] state regulation of the right to intrastate interconnection and the right to specify the type of interconnection." NPRM at ¶ 71 (citing Cellular Interconnection Order, 2 FCC Rcd 2910 (1987)).

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The NPRM also requested comment on "whether, under Section 332(c)(3) of the Act, state regulation of interconnection rates of mobile service providers is preempted." NPRM at ¶ 71 (emphasis added). Finally, the Commission found that, with respect to interconnection rates charged by LECs:

> it is not necessary to preempt state and local regulation at this time. We do propose, however, to reserve the right to consider preemption at a later time if it is demonstrated that state and local regulation is exercised in such a way as to preclude development of interstate PCS service.

NPRM at ¶ 25.

PRTC agrees with CTIA, the DC Public Service Commission and the California Public Utilities Commission that the Budget Act does not provide the Commission with expanded authority over the intrastate interconnection rates charged by LECs.[1/] The only expanded preemption authority given by the Budget Act amendments to the Commission is found in revised Section 332(c)(3)(A), which provides in pertinent part:

> STATE PREEMPTION. - Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. (Emphasis added).

As the Commission recognized in the NPRM, this section applies only to the rates charged by mobile service providers. See NPRM ¶ 71 (requesting comment on "whether, under Section 332(c)(3) of the Act, state regulation of

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[1/] See Comments of The Cellular Telecommunications Industry Association at 39-41; Comments of the Public Service Commission of the District of Columbia at 10; Comments of the People of the State of California and the Public Utilities Commission of the State of California at 10-11.

interconnection rates of mobile service providers is preempted." (emphasis added)).[2/] Thus, the Commission's existing jurisdiction over intrastate rates charged by LECs to mobile service providers is still subject to the limitation on Commission jurisdiction found in Section 2(b) of the Act.

Nor does Section 332(c)(1)(B) regarding interconnection afford the Commission any authority over LEC intrastate interconnection rates. That section provides:

> Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act. (Emphasis added).

Thus, the Budget Act expressly refused to expand the Commission's interconnection authority under the Communications Act.

The Commission defined its authority over LEC interconnection rates with respect to radio common carrier ("RCC") service in Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910 (1987) ("RCC Interconnection Order"). There, the Commission explained that Section 2(b) of the Act requires that "[i]n those instances where it is possible to separate the interstate and intrastate components and the Act has not provided otherwise for Commission oversight, such as through separations, the Commission has no authority to

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[2/] See also DC PSC at 10; CTIA at 39-41; California PUC at 10; Initial Comments of the National Association of Regulatory Utility Commissioners at 22.

preempt state regulation." Id. at 2912. With respect to interconnection, the Commission found that, although it had "plenary jurisdiction over the physical interconnections between cellular and landline carriers, the actual costs and charges for the physical interconnections of cellular systems are suited to dual intrastate and interstate regulation." Id. Therefore, the Commission "emphasized" that under Section 2(b) its "jurisdiction is limited to the actual interstate cost of interconnection . . . ." Id. (emphasis added). Because of this limitation on its jurisdiction, the Commission found that preemption over intrastate interconnection rates would be permitted only when:

> the intrastate component of charges for physical interconnection, as well as other charges to cellular carriers, may be so high as to effectively preclude interconnection. This would 'negate' the federal decision to permit interconnection, thus warranting our preemption of some aspects of particular intrastate charges.

Id. (citing Louisiana Public Service Comm'n v. FCC, 106 S.Ct. 1890, 1902 n.4 (1986)).

The Budget Act did not remove this limitation on the Commission's jurisdiction with respect to intrastate interconnection rates charged by LECs. As shown above, the drafters of the Budget Act explicitly refused to expand the Commission's interconnection authority (Section 332(c)(1)(B)), and the expansion of the Commission's authority to preempt state rate regulation

applies only to rates charged by mobile service providers (Section 332(c)(3)(A)).[3/]

Therefore, as the Commission has recognized, the only circumstances under which preemption of state regulation of LEC intrastate interconnection rates would be permissible would be where the intrastate rates were "so high as to effectively preclude interconnection." Cellular Interconnection Order, 2 FCC Rcd at 2912. The Commission has not made that determination in this proceeding and properly refused preemption.[4/]

[3/] For this reason, the Comcast and Cox proposal that the Commission require LECs to submit "intrastate interconnection tariffs and all contracts for interconnection and for billing and collection" should be rejected as outside the Commission's jurisdiction. See Comments of Comcast Corporation at 11-12; Comments of Cox Enterprises, Inc., at 5-6. As shown above, intrastate interconnection rates are a matter of state regulatory jurisdiction, and the Commission has also determined that it does not have jurisdiction over carrier-to-carrier financial arrangements, including billing arrangements, as they relate to intrastate interconnection. See RCC Interconnection Order, 2 FCC Rcd at 2913; Indianapolis Telephone Co., 1 FCC Rcd 228, 229 (CCB 1986), recon. denied, 2 FCC Rcd 2893 (1987).

[4/] Nextel Communications recognized in its Comments that "LEC interconnection is, of course, an intrastate local exchange telephone service subject to state regulatory jurisdiction under Section 2(b) of the Act." Comments of Nextel Communications, Inc., at 25. However, Nextel then asserts without further support that "[p]reemption of state rate regulation of LEC interconnection would further ease regulatory burdens and assure comparable treatment of mobile carriers. The Commission has both the legal authority and sufficient justification to preempt rate regulation in this proceeding." Id. at 26. As Nextel itself acknowledged, the Commission's legal authority is limited by Section 2(b), and as shown above, under that section preemption would be justified only where intrastate rates were high enough to effectively preclude interconnection. Nextel has not attempted to demonstrate that such is the case. Therefore, its assertion that the Commission may preempt state rate regulation in this proceeding is mistaken.

II. NO NEW SAFEGUARDS ARE REQUIRED FOR DOMINANT CARRIERS WITH COMMERCIAL MOBILE SERVICE AFFILIATES

The Commission requested comment on whether it should impose safeguard requirements on dominant carriers with commercial mobile service affiliates to ensure that the dominant carrier does not act anticompetitively. NPRM ¶ 64. A few commenters proposed that commercial mobile services provided by a LEC affiliate must be provided through a separate subsidiary.[5/] There is no justification for a separate subsidiary requirement. In other contexts, the Commission has rejected such structural safeguards as creating unnecessary difficulties in carriers' day-to-day operations, and has instead imposed non-structural safeguards such as strict accounting requirements. See, e.g., Computer III Remand Proceedings, 6 FCC Rcd 7571 (1991), appeal pending sub nom. People of the State of California v. FCC, No. 92-70083 (9th Cir.), filed Feb. 14, 1992.

Local exchange carriers such as PRTC are subject to stringent accounting and cost allocation requirements to ensure that there is no cross-subsidization of non-regulated services with revenues from regulated services. PRTC is required to file an ARMIS Quarterly Report (43-01), a USOA Report (43-02), a Joint Cost Report (43-03), and an Access Report (43-04). PRTC is also required to comply with the Commissions Part 64 cost allocation rules. In Computer III Remand Proceedings, the Commission concluded that such a comprehensive system of cost accounting safeguards effectively protects ratepayers against cross-subsidization. Id. at 7591. Therefore, no

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[5/] See Comcast at 9, 14; Cox Enterprises at 6, 8.

justification has been shown for requiring local exchange carriers to provide commercial mobile services only through separate subsidiaries.

Indeed, the Commission has already rejected the imposition of a separate subsidiary requirement with respect to LEC provision of both cellular service and PCS. In Cellular Communications Systems, 89 FCC 2d 58, 78 (1982), the Commission held that, with the exception of pre-divestiture AT&T, LECs should be permitted to provide cellular service without creating a separate subsidiary.[6/] The Commission also declined to impose a separate subsidiary requirement on LEC (and BOC) provision of PCS. See Amendment of the Commission's Rules to Establish New Personal Communications Services (Second Report and Order), GEN Docket No. 90-314 at ¶ 126 (rel. Oct. 22, 1993). Thus, the Commission has already determined that with respect to two forms of commercial mobile service, a separate subsidiary requirement should not be imposed, and no party has shown that these determinations should not be applied to commercial mobile services generally.

PRTC agrees with the Comments of TRW that

> based on the highly competitive nature of the commercial mobile services marketplace, . . . prophylactic safeguards are not necessary. There will be no dominant carriers in the commercial mobile services marketplace for the foreseeable future. In any

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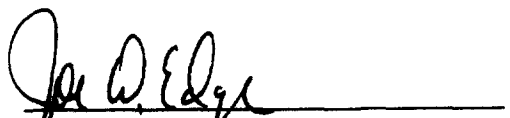
[6/] After divestiture, the separate subsidiary requirement that had been imposed on AT&T was applied to the Bell Operating Companies. See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (Report and Order), 57 RR2d 989, 1002 (1985). See also 47 C.F.R. § 22.901. That requirement, however, was not applied to other local exchange carriers.

> event, the Commission has noted that it retains the power -- even with forbearance -- to redress carrier abuses through its complaint process under Section 208 of the Act.

Comments of TRW, Inc., at 32 (citing NPRM at 23). Local exchange carriers are already subject to accounting and cost allocation safeguards and nondiscrimination requirements.[7/] No further safeguards are necessary.

Respectfully submitted,



Joe D. Edge
Sue W. Bladek
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 835-8000

Attorneys for Puerto Rico
Telephone Company

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[7/] Comcast and Cox ask the Commission to "condition all the CMS licenses of LEC affiliates [to] state that the failure to abide by Commission interconnection policies and regulations will result in revocation of the license." Comcast at 10; Cox at 7. It should be noted that the Commission cannot place conditions on licenses previously granted without first notifying the licensees in writing and affording the licensees the opportunity to protest the condition. See 47 U.S.C. § 316.

CERTIFICATE OF SERVICE

I, Jean M. Layton, hereby certify that a copy of the foregoing Reply Comments of Puerto Rico Telephone Company was mailed, postage prepaid, this 23rd day of November, 1993 to the following:

Leonard J. Kennedy
Laura H. Phillips
Jonathan M. Levy
Dow, Lohnes & Albertson
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

Werner K. Hartenberg
Laura H. Phillips
Dow, Lohnes & Albertson
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

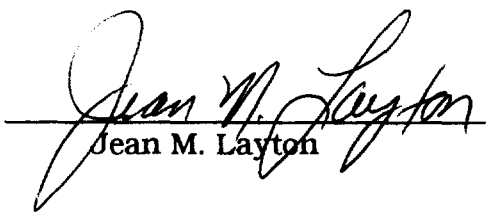
Robert S. Foosaner, Esq.
NEXTEL Communications, Inc.
601 13th Street, N.W.
Suite 1110 South
Washington, D.C. 20005

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of
Regulatory Utility Commissioners
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

Peter Arth, Jr.
Edward W. O'Neill
Ellen S. Levine
State of California Public
Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Michael F. Altschul
Cellular Telecommunications
Industry Association
Two Lafayette Centre, Third Floor
1133 21st Street, N.W.
Washington, D.C. 20036

Daryl L. Avery
Peter G. Wolfe
Public Service Commission of
the District of Columbia
450 Fifth Street, N.W.
Washington, D.C. 20001



Jean M. Layton